2/22/2008 Discussion of proposed changes to Env-Wq 1703.14 Nutrients

The Nutrients rule (Env-Wq 1703.14) as currently written does not allow for water transfers to lakes (no new or increased discharge of phosphorus to lakes (1703.14(d))) or for water transfers to Class A waters (no phosphorus or nitrogen unless naturally occurring (1703.14(a)) – and clearly a manmade transfer is not naturally occurring).

Legitimate reasons exist for water transfers to occur and the reality is that water transfers are currently happening – the difference being that recent court decisions now require NPDES permits for transfers. The rules should not prohibit water transfers outright – each should be evaluated on its on merits. Water transfers will require a full antidegradation review under the proposed transfer rules and it is under this review that impacts can be evaluated.

The task is to develop rule changes to the Nutrient section that will allow for water transfers to be considered without unnecessarily weakening existing protections against excess nutrients and cultural eutrophication. In order to assist in this task, the following information is provided.

A. Chronology of proposed language changes to Env-Wq 1703.14 Nutrients

The WQSAC worked on proposed changes to the nutrient rule beginning in early 2003. Below we provide the existing language and subsequent iterations of language changes discussed at various WQSAC meetings. The version discussed at the 10/26/2004 WQSAC meeting is the final discussed version. Following that is a proposed version for discussion at the 2/26/2008 WQSAC meeting.

1. Existing

Env-W~~s~~*q* 1703.14 Nutrients.

(a) Class A waters shall contain no phosphorus or nitrogen unless naturally occurring.

(b) Class B waters shall contain no phosphorus or nitrogen in such concentrations that would impair any existing or designated uses, unless naturally occurring.

(c) Existing discharges containing either phosphorus or nitrogen which encourage cultural eutrophication shall be treated to remove phosphorus or nitrogen to ensure attainment and maintenance of water quality standards.

(d) There shall be no new or increased discharge of phosphorus into lakes or ponds.

(e) There shall be no new or increased discharge(s) containing phosphorus or nitrogen to tributaries of lakes or ponds that would contribute to cultural eutrophication or growth of weeds or algae in such lakes and ponds.

2. 4/8/2003

Env-Ws 1703.14 Nutrients.

(a) Surface waters shall contain no phosphorus or nitrogen in such concentrations that would impair any existing or designated uses, unless naturally occurring.

(b) Except for water transfers, there shall be no new or increased point source discharge of phosphorus into lakes or ponds.

(c) There shall be no new or increased discharge(s) containing phosphorus or nitrogen to lakes, ponds, or their tributaries that would contribute to cultural eutrophication or growth of weeds or algae in such lakes and ponds.

3. 11/18/2003

Env-Ws 1703.14 Nutrients.

(a) Class A waters shall contain no phosphorus or nitrogen unless naturally occurring.
(b) Class B waters shall contain no phosphorus or nitrogen in such concentrations that would impair any existing or designated uses, unless naturally occurring.
(c) Existing discharges containing either phosphorus or nitrogen which encourage cultural eutrophication shall be treated to remove phosphorus or nitrogen to ensure attainment and maintenance of water quality standards.
(d) Except for water transfers, there shall be no new or increased point source discharge of phosphorus into lakes or ponds.
(e) There shall be no new or increased discharge(s) containing phosphorus or nitrogen to lakes, ponds, or their tributaries that would contribute to cultural eutrophication or growth of weeds or algae in such lakes and ponds.

4. 2/9/2004

Env-Ws 1703.14 Nutrients.

(a) ***Except when due to water transfers,*** Class A waters shall contain no phosphorus or nitrogen unless naturally occurring.

(b) Class B waters shall contain no phosphorus or nitrogen in such concentrations that would impair any existing or designated uses, unless naturally occurring.

(c) Existing discharges containing either phosphorus or nitrogen which encourage cultural eutrophication shall be treated to remove phosphorus or nitrogen to ensure attainment and maintenance of water quality standards.

(d) There shall be no new or increased ***point source*** discharge ***of treated or untreated industrial waste or sewage containing*** phosphorus ~~in~~to lakes or ponds ***or to tributaries of lakes or ponds.***

(e) There shall be no new or increased discharge(s) containing phosphorus or nitrogen to ***lakes or ponds or to*** tributaries of lakes or ponds that would contribute to cultural eutrophication or growth of weeds or algae in such lakes and ponds.

5. 3/22/2004

Env-Ws 1703.14 Nutrients.

(a) Class A waters shall contain no phosphorus or nitrogen unless naturally occurring.

(b) Class B waters shall contain no phosphorus or nitrogen in such concentrations that would impair any existing or designated uses, unless naturally occurring.

(c) Existing discharges containing either phosphorus or nitrogen which encourage cultural eutrophication shall be treated to remove phosphorus or nitrogen to ensure attainment and maintenance of water quality standards.

(d) There shall be no new or increased ***point source*** discharge ***of treated or untreated industrial waste or sewage containing*** phosphorus ~~in~~to lakes or ponds ***or to tributaries of lakes or ponds.***

(e) There shall be no new or increased **point or *nonpoint source*** discharge(s) containing phosphorus or nitrogen to ***lakes or ponds or to*** tributaries of lakes or ponds that would contribute to cultural eutrophication or growth of weeds or algae in such lakes and ponds.

6. 7/13/2004

Env-Ws 1703.14 Nutrients.

(a) Class A waters shall contain no phosphorus or nitrogen unless naturally occurring.

(b) Class B waters shall contain no phosphorus or nitrogen in such concentrations that would impair any existing or designated uses, unless naturally occurring.

(c) Existing discharges containing either phosphorus or nitrogen which encourage cultural eutrophication shall be treated to remove phosphorus or nitrogen to ensure attainment and maintenance of water quality standards.

(d) There shall be no new or increased discharge of ***sewage or waste containing*** phosphorus ~~in~~to lakes or ponds ***or to tributaries of lakes or ponds.***

7. 10/26/2004

Amend Section Env-Wq 1703.14 (#7151, eff 12-10-99) Nutrients to read as follows:

Env-Wq 1703.14 Nutrients.

(a) Class A waters shall contain no phosphorus or nitrogen unless naturally occurring.

(b) Class B waters shall contain no phosphorus or nitrogen in such concentrations that would impair any existing or designated uses, unless naturally occurring.

(c) Existing discharges containing either phosphorus or nitrogen which encourage cultural eutrophication shall be treated to remove phosphorus or nitrogen to ensure attainment and maintenance of water quality standards.

(d) There shall be no new or increased discharge of ***sewage or waste containing*** phosphorus ~~in~~to lakes or ponds ***or to tributaries of lakes or ponds.***

~~(e) There shall be no new or increased discharge(s) containing phosphorus or nitrogen to tributaries of lakes or ponds that would contribute to cultural eutrophication or growth of weeds or algae in such lakes and ponds.~~

B. Proposed changes for 2/26/2008 WQSAC meeting

Env-Wq 1703.14 Nutrients.

(a) Class A waters shall contain no phosphorus or nitrogen unless naturally occurring.

(b) Class B waters shall contain no phosphorus or nitrogen in such concentrations that would impair any existing or designated uses, unless naturally occurring.

(c) ~~Existing~~ ***D***~~d~~ischarges containing either phosphorus or nitrogen ***that*** ~~which~~ encourage cultural eutrophication shall be treated to remove phosphorus or nitrogen to ensure attainment and maintenance of water quality standards.

(1) A discharge to a lake or pond or to a surface water that drains to a lake or pond that contains a mean total phosphorus concentration that is 10 ug/l or more above the mean total phosphorus concentration in the receiving lake or pond outside the influence of the discharge is deemed to encourage cultural eutrophication.

(2) A discharge to flowing waters not included in (1) above that results in a mean total phosphorus concentration of 100 ug/l or more in the flowing water is deemed to encourage cultural eutrophication

(d) There shall be no new or increased discharge of ***sewage or waste containing*** phosphorus **or nitrogen** ~~in~~to lakes or ponds ***or to surface waters that drain to lakes or ponds.***

(e) ***Reserved for words that cover septic systems and wastewater land application sites.*** ~~There shall be no new or increased discharge(s) containing phosphorus or nitrogen to tributaries of lakes or ponds that would contribute to cultural eutrophication or growth of weeds or algae in such lakes and ponds.~~